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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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09/745,192

12/21/2000

Rudolph W. Frey

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11/25/2003

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EXAMINER

SHAY, DAVID M

ART UNIT

PAPER NUMBER

3739

DATE MAILED: 11/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



**UNITED STATES DEPARTMENT OF COMMERCE
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| EXAMINER |
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| ART UNIT | PAPER NUMBER |
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DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on August 21, 2001

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-85 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-85 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of Reference Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 3

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-28 and 85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hohla in combination with Charman. Hohla teaches a method such as claimed except for the precise corrections and the means for determining the tissue to be removed. Charman teaches using wavefront aberrations to correct vision. It would have been obvious to the artisan of ordinary skill to employ the method of Charman to determine the tissue to be removed in the method of Hohla, since Hohla teaches no particular method to do this or to employ the refractive correction method of Hohla in the method of Charman, since Charman discusses no particular refractive surgical procedure, and in either case to provide the particular surgical outcomes, since these are notorious in the art, official notice of which is hereby taken, thus producing a method such as claimed.

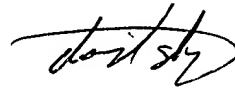
Claims 29-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Munnerlyn in combination with Charman. Munnerlyn teaches a method as claimed except for the precise corrections the means for determining. The teachings of Charman; the motivations for combination thereof; and the official notification are as set forth above. Thus it would have been obvious to the artisan of ordinary skill to combine these old and well known teachings to produce a method such as claimed.

Claims 58-84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warner et al in combination with Charman. Warner et al teach a method such as claimed except for the

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precise corrections and the means for determining. The teachings of Charman; the motivations for combination thereof; and the official notification are all as set forth above. This it would have been obvious to the artisan of ordinary skill to combine these old and well known teachings to produce a method such as claimed.

Any inquiry concerning this communication should be directed to David Shay at telephone number 308-2215.



Shay/DI

October 23, 2003

DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330